

IDENTIFICATION AND DESCRIPTION OF
LEGAL REQUIREMENTS

BURLINGTON NORTHERN
LIVINGSTON SHOP COMPLEX
CECRA SITE

RECORD OF DECISION

Montana Department of Environmental Quality

APPENDIX A

INTRODUCTION

Remedial actions undertaken pursuant to the Montana Comprehensive Environmental Cleanup and Responsibility Act (CECRA), §§ 75-10-701 through 75-10-724, Montana Code Annotated (MCA), must "attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures present and future protection of public health, safety, and welfare and of the environment." § 75-10-721(1), MCA.

Additionally, the Montana Department of Environmental Quality (DEQ) "shall require cleanup consistent with applicable state or federal environmental requirements, criteria or limitations" and "shall consider and may require cleanup consistent with substantive state or federal environmental requirements, criteria, or limitations that are well-suited to the site conditions." § 75-10-721(2)(a) and (b), MCA.¹

"Applicable" requirements are those that by their terms meet the jurisdictional prerequisites and apply to a given action, item or characteristic at the site. "Well-suited" requirements are those requirements that are not applicable, but address situations or problems sufficiently similar to those at the site that they are well-suited for use at the site. Attainment of both "applicable" requirements and designated "well-suited" requirements is equally mandatory under CECRA.

This document constitutes DEQ's formal identification and detailed description of ERCLs for the remedial action at the Burlington Northern Livingston Shop Complex Site.

Environmental requirements, criteria and limitations are generally of three types: contaminant-specific, location-specific, and action-specific. Contaminant-specific requirements are those that establish an allowable level or concentration of a hazardous or deleterious substance in the environment or that prescribe a level or method of treatment for a hazardous or deleterious substance. Action-specific requirements are those that are triggered by the performance of a certain activity as part of a particular remedy. Location-specific requirements are those that serve as restrictions on the concentration of a hazardous or deleterious substance or the conduct of activities solely because they are in specific locations or affect specified types of areas.

¹ When CECRA § 75-10-721 was amended during the 1995 legislative session, one of the revisions pertained to the development and selection of ERCLs. *see* Chapter 584, Laws of Montana, 1995. However, Section 15 of Chapter 584 states that the 1995 revisions and amendments do not apply to civil actions commenced or begun prior to the effective date of the 1995 act [May 1, 1995] or to claims based on those actions.

The complaint in State of Montana v. Burlington Northern, Inc., Burlington Northern Railroad Company and Glacier Park Company CV 88-141-H-CCL was filed December 27, 1988 and pertains to the Burlington Northern Livingston Railyard Site, Mission Wye site and other Burlington Northern Facilities. Therefore, these ERCLs comply with CECRA as amended in 1991, rather than CECRA as amended by Chapter 584, Laws of Montana, 1995. The 1997 and 1999 Montana legislatures did not alter the role of ERCLs.

In the analysis below, federal and state contaminant-specific and action-specific requirements are presented together, because they present similar or overlapping requirements.

The standards for off-site disposal are not ERCLs, but are instead independently applicable laws. For off-site actions, all standards, both substantive and procedural must be met. Under CECRA, neither permit exemptions nor waivers are allowed under the law for off-site actions. Off-site disposal will be coordinated with the pertinent regulatory bureaus at DEQ. The "Other Laws" section at the end of the ERCLs lists certain laws which are independently applicable regarding the remedial action.

The description of applicable and well-suited federal and state requirements which follows includes summaries of the legal requirements which attempt to set out the requirement in a reasonably concise fashion that is useful in evaluating compliance with the requirement. These descriptions are provided to allow the user a basic indication of the requirement without having to refer constantly back to the statute or regulation itself. However, in the event of any inconsistency between the law itself and the summaries provided in this document, the actual requirement is ultimately the requirement as set out in the law, rather than any paraphrase of the law provided here.

In many cases, the State has essentially adopted certain federal regulations or incorporated by reference certain federal regulations into the State regulations. In those cases, the ERCL may be listed in the federal section with the State adoption noted.

This document constitutes DEQ's formal identification and detailed description of ERCLs for remedial action at the Burlington Northern Livingston Shop Complex CECRA Site. This ERCLs analysis is based on 75-10-721, MCA, section 121(d) of CERCLA, 42 U.S.C. § 9621(d); CERCLA Compliance with Other Laws Manual, Volumes I and II, OSWER Dirs. 9234.1-01 and-02 (August 1988 and August 1989 respectively); various CERCLA ARARs Fact Sheets issued as OSWER Directives; the Preamble to the Proposed NCP, 53 Fed. Reg. 51394 *et seq.* (December 21, 1988); the Preamble to the Final NCP, 55 Fed. Reg. 8666-8813 (March 8, 1990); the Final NCP, 40 CFR Part 300 (55 Fed. Reg. 8813-8865, March 8, 1990). This ERCLs analysis is also based on the provisions of law discussed in this document.

I. FEDERAL AND STATE CONTAMINANT SPECIFIC ERCLs

CONTAMINANT SPECIFIC ERCLs

Surface and Groundwater Quality Standards (Applicable)

Causing of pollution

Section 75-5-605 of the Montana Water Quality Act prohibits the causing of pollution of any state waters. Section 75-5-103(21)(a)(i) defines pollution as contamination or other alteration of physical,

chemical, or biological properties of state waters which exceeds that permitted by the water quality standards.

Placement of Wastes

Section 75-5-605, MCA states that it is unlawful to place or cause to be placed any wastes where they will cause pollution of any state waters. Any permitted placement of waste is not placement if the agency's permitting authority contains provisions for review of the placement of materials to ensure it will not cause pollution to state waters.

Nondegradation

Section 75-5-303, MCA states that existing uses of state waters and the level of water quality necessary to protect the uses must be maintained and protected, with certain limited exceptions.

Groundwater Quality Standards

Maximum Contaminant Levels and Maximum Contaminant Level Goals (Well-Suited)

Because the aquifer affected by the site is currently and has been used as a drinking water source, the MCLs and non-zero MCLGs specified in 40 CFR Part 141 (Primary Drinking Water Standards) are well-suited requirements which are ultimately to be attained by the remedy for the site.² Because many of the MCLs are equivalent with the State groundwater standards, the Primary Drinking Water Standards are listed below with the State groundwater standards.

Secondary Maximum Contaminant Levels (Well-Suited)

Because the aquifer affected by the site is currently and has been used as a drinking water source, the Secondary Maximum Contaminant Levels (SMCLs) specified in 40 CFR Part 143.3 are well-suited requirements which are ultimately to be attained by the remedy for the site. 40 CFR 143.3 contains standards for color, odor (3 threshold odor number) and corrosivity which are well-suited to the remedial action.

Montana Groundwater Pollution Control System (Applicable)

ARM 17.30.1006 classifies groundwater into Classes I through IV based upon its specific conductance and establishes the groundwater quality standards applicable with respect to each groundwater classification.

² Montana Maximum Contaminant Levels:

Pursuant to the Public Water Safety Act, 75-6-101 et. seq., MCA and ARM 17.38.204, the MCLs specified in 40 CFR Part 141 (Primary Drinking Water Standards) are incorporated.

Based upon its specific conductance, the groundwater at the site must meet the standards for Class I groundwater. These standards are applicable. Concentrations of substances in Class I may not exceed the human health standards for groundwater listed in department Circular WQB-7.³ For the primary contaminants of concern, the Circular WQB-7 standards and MCLs are listed below. For all contaminants of concern except vinyl chloride, the MCLs and Circular WQB-7 standards are equivalent.⁴ All levels are ug/l and are dissolved phase.

VOCs:

Tetrachloroethene	5.0
Trichloroethene	5.0
Cis-1,2-Dichloroethene	70
Vinyl chloride	0.15
Chlorobenzene	100
1,4-Dichlorobenzene	75

PAHs (SVOCs):

Acenaphthene	420
Anthracene	2100
Benz(a)anthracene	0.48
Benzo(a)pyrene	0.048
Benzo(b)fluoranthene	0.48
Benzo(k)fluoranthene	4.79
Chrysene	48
Dibenzo(a,h)anthracene	0.048
Fluoranthene	280
Fluorene	280
Indeno(1,2,3-cd)pyrene	0.48
Naphthalene	28
Pyrene	210

Lead	15
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³ Montana Department of Environmental Quality, Planning, Prevention and Assistance Division, Circular WQB-7, Montana Numeric Water Quality Standards (September, 1999).

⁴ For vinyl chloride, the WQB-7 standard is 0.15 ug/l; the MCL is 2 ug/l.

For concentrations of parameters for which human health standards are not listed in WQB-7, ARM 17.30.1006 allows no increase of a parameter to a level that renders the waters harmful, detrimental or injurious to the beneficial uses listed for Class I water. This includes the following petroleum constituents. All levels are µg/l and are dissolved phase.

ARM 17.30.1011 provides that any groundwater whose existing quality is higher than the standard for its classification must be maintained at that high quality unless degradation may be allowed under the principles established in § 75-5-303, MCA, and the nondegradation rules at ARM Title 17, chapter 30, subchapter 7.

Surface Water Quality Standards (Applicable)

The Montana Water Quality Act, §§ 75-5-101 et seq., establishes requirements for restoring and maintaining the quality of surface and ground waters and the federal Clean Water Act, 33 U.S.C. §§ 1251 et seq., establishes requirements for restoring and maintaining the quality of surface waters. Under these Acts the state has authority to adopt water quality standards designed to protect beneficial uses of each water body and to designate uses for each water body. Montana's regulations classify state waters according to quality, place restrictions on the discharge of pollutants to state waters and prohibit the degradation of state waters.

ARM 17.30.611(1) (Applicable) provides that the waters of the Yellowstone River drainage upstream of the Laurel water supply intake, which includes the Livingston area, are classified "B-1" for water use.

ARM 17.30.623 provides that concentrations of carcinogenic, bioconcentrating, toxic or harmful parameters which would remain in the water after conventional water treatment may not exceed the applicable standards set forth in department circular WQB-7.

WQB-7 provides that AFor surface waters the Standard is the more restrictive of either the Aquatic Life Standard or the Human Health Standard.≡ For the primary Contaminants of Concern the Circular WQB-7 standards are the same as listed above in groundwater.

The B-1 classification standards at ARM 17.30.623 also include the following criteria: 1) Dissolved oxygen concentration must not be reduced below the levels given in department circular WQB-7; 2) Hydrogen ion concentration (pH) must be maintained within the range of 6.5 to 9.5; 3) the maximum allowable increase above naturally occurring turbidity is 5 nephelometric turbidity units; 4) Temperature increases must be kept within prescribed limits; 5) No increase are allowed above naturally occurring concentrations of sediment, settleable solids, oils, floating solids, which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish or other wildlife. 6) True color must be kept within specified limits.

ARM 17.30.637 which prohibits discharges containing substances that will: (a) settle to form objectionable sludge deposits or emulsions beneath the surface of the water or upon adjoining shorelines; (b) create floating debris, scum, a visible oil film (or be present in concentrations at or in excess of 10 milligrams per liter) or globules of grease or other floating materials; (c) produce odors, colors or other conditions which create a nuisance or render undesirable tastes to fish flesh or make fish inedible; (d) create concentrations or combinations of materials which are toxic or harmful to human, animal, plant or aquatic life; (e) create conditions which produce undesirable aquatic life.

ARM 17.30.705 provides that for any surface water, existing and anticipated uses and the water quality necessary to protect these uses must be maintained and protected unless degradation is allowed under the nondegradation rules at ARM 17.30.708.

Stormwater Runoff (Applicable)

Pursuant to authority under the Water Quality Act, Title 17, Chapter 30, Sub-Chapter 6, and Title 17, Chapter 30, Sub-Chapter 13, including ARM 17.30.1332, the Water Quality Division issues general stormwater permits for certain activities. For construction activities, the following permit must be obtained: General Discharge Permit for Storm Water Associated with Construction Activity, Permit No. MTR100000 (May 19, 1997).

Generally, the permits require the permittee to implement Best Management Practices (BMP) and to take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment. However, if there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with the activity, an individual MPDES permit or alternative general permit may be required.

Ambient Air Quality Standards (Applicable)

The following standards are applicable at the site⁵:

40 CFR 50.12 and ARM 17.8.222. Ambient air quality standard for lead. Lead concentrations in the ambient air shall not exceed the following 90-day average: 1.5 micrograms lead per cubic meter of air.

40 CFR 50.9 and ARM 17.8.213. Ambient air quality standard for ozone. No person shall cause or contribute to concentrations of ozone in the ambient air exceeding: 0.10 ppm 1-hour average

⁵ Each of the ambient air quality standards includes in its terms specific requirements and methodologies for monitoring and determining levels. Such requirements are also applicable requirements. In addition, ARM 17.8.204 and 17.8.206, Ambient Air Monitoring; Methods and Data, respectively (Applicable), require that all ambient air monitoring, sampling and data collection, recording, analysis and transmittal shall be in compliance with the Montana Quality Assurance Manual except when more stringent requirements are determined by DEQ to be necessary.

(0.12 ppm federal standard). 40 CFR 50.10 establishes a daily maximum 8-hour average 0.08 parts per million (ppm).

ARM 17.8.220. Ambient air quality standard for settled particulate matter. Particulate matter concentrations in the ambient air shall not exceed the following 30-day average: 10 grams per square meter.

40 CFR 50.6 and ARM 17.8.223. Ambient air quality standards for PM-10. PM-10 concentrations in the ambient air shall not exceed the following standards: 150 micrograms/cubic meter of air, 24-hour average; and 50 micrograms/cubic meter of air, expected annual average.

40 CFR 50.8 and ARM 17.8.212. Ambient air quality standards for carbon monoxide. Carbon monoxide concentrations in the ambient air shall not exceed the following standards: 9 ppm 8-hour average; and 23 ppm for a 1-hour average (35 ppm for federal).

Emission Standards (Applicable)

Montana has promulgated standards to regulate emissions of certain contaminants into the air. The state emission standards are enforceable under the Montana Clean Air Act, §§ 75-2-101 et seq., MCA.

ARM 17.8.304. Visible Air Contaminants. No source may discharge emissions into the atmosphere that exhibit an opacity of 20 percent or greater, averaged over six consecutive minutes. This standard is limited to point sources, but excludes wood waste burners, incinerators, and motor vehicles.

ARM 17.8.308. Airborne Particulate Matter. Emissions of airborne particulate matter from any stationary source shall not exhibit an opacity of 20 percent or greater, averaged over six consecutive minutes. This standard applies to the production, handling, transportation, or storage of any material; to the use of streets, roads, or parking lots; and to construction or demolition projects.

ARM 17.8.315. Odors. If a business or other activity will create odors, those odors must be controlled, and no business or activity may cause a public nuisance.

ARM 17.8.604. Prohibited open burning. Open burning of numerous specific materials, including but not limited to oil and petroleum products and hazardous wastes, is prohibited.

ARM 17.8.705 requires that permits be obtained for the construction, installation, alteration, or use of specified air contaminant sources. All air permits required for remedial actions must be obtained.

ARM 17.8.715 requires sources for which air quality permits are required to use best available control technology (BACT) or to meet the lowest achievable emission rate (LAER), as applicable.

II. FEDERAL LOCATION SPECIFIC ERCLs

Criteria for Classification of Solid Waste Disposal Facilities and Practices (Applicable and Well-Suited)

Under the selected remedy, no solid or hazardous waste (other than media treated to cleanup levels) may be disposed on-site. The standards therefore are pertinent to the cinder pile (well-suited) and placement of ex situ soils treated to cleanup levels (applicable) and post-jurisdictional wastes (applicable).

The criteria contained in 40 CFR Part 257, establish standards with which solid waste disposal must comply to avoid possible adverse effects on health or the environment. 40 CFR Part 257 includes the following standards: Section 257.3-1(a) requires that facilities or practices in the floodplain not result in the washout of solid waste so as to pose a hazard to human life, wildlife, or land or water resources. Section 257.3-2 provides for the protection of threatened or endangered species. Section 257.3-3 provides that a facility shall not cause the discharge of pollutants into waters of the United States. Section 257.3-4 states that a facility or practice shall not contaminate underground drinking water.

The Endangered Species Act (Well-Suited)

This statute and implementing regulations (16 U.S.C. § 1531 *et seq.*, 50 CFR Part 402, 40 CFR 6.302(h), and 40 CFR 257.3-2) require that any federal activity or federally authorized activity may not jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify a critical habitat. Compliance with this requirement involves consultation with the U.S. Fish and Wildlife Service (USFWS) and a determination of whether there are listed or proposed species or critical habitats present at the Site, and, if so, whether any proposed activities will impact such wildlife or habitat. No endangered or threatened species was identified on-site although the Yellowstone Trout is treated as a species of special concern by the State. Any action affecting federal or State endangered or threatened species must comply with all listed requirements.

Sections 87-5-106, 107, and 111, MCA (Applicable): Endangered species should be protected in order to maintain and to the extent possible enhance their numbers. These sections list endangered species, prohibited acts and penalties. See also, §§ 87-5-106 and 87-5-201, MCA, (Applicable) concerning protection of wild birds, nests and eggs.

ARM 12.5.201 (Applicable). Certain activities are prohibited with respect to specified endangered species.

Migratory Bird Treaty Act (Well-Suited) This requirement (16 U.S.C. § 703 *et seq.*) establishes a federal responsibility for the protection of the international migratory bird resource and requires continued consultation with the USFWS during remedial design and remedial action to ensure that

the cleanup of the site does not unnecessarily impact migratory birds.

Bald Eagle Protection Act (Well-Suited) This requirement (16 U.S.C. § 668 *et seq.*) establishes a federal responsibility for protection of bald and golden eagles, and requires continued consultation with the USFWS during remedial design and remedial action to ensure that any cleanup of the site does not unnecessarily adversely affect the bald and golden eagle.

Historic Sites, Buildings, Objects and Antiquities Act (Well-Suited) These requirements, found at 16 U.S.C. 461 *et seq.*, provide that, in conducting an environmental review of a proposed action, the responsible official shall consider the existence and location of natural landmarks using information provided by the National Park Service pursuant to 36 CFR 62.6(d) to avoid undesirable impacts upon such landmarks. No historic sites were identified.

Fish and Wildlife Coordination Act (Well-Suited) These standards are found at 16 U.S.C. § 661 *et seq.* and 40 CFR 6.302(g) and require that federally funded or authorized projects ensure that any modification of any stream or other water body affected by a funded or authorized action provide for adequate protection of fish and wildlife resources.

Floodplain Management Order (Well-Suited) This requirement (40 CFR Part 6, Appendix A, Executive Order No. 11,988) mandates that federally funded or authorized actions within the 100 year flood plain avoid, to the maximum extent possible, adverse impacts associated with development of a floodplain.

Protection of Wetlands Order (Well-Suited) This requirement (40 CFR Part 6, Appendix A, Executive Order No. 11,990) mandates that federal agencies and potentially responsible parties avoid, to the extent possible, the adverse impacts associated with the destruction or loss of wetlands and to avoid support of new construction in wetlands if a practicable alternative exists. Section 404(b)(1), 33 U.S.C. § 1344(b)(1), also prohibits the discharge of dredged or fill material into waters of the United States. Together, these requirements create a "no net loss" of wetlands standard.

III. STATE LOCATION SPECIFIC ERCLs

Solid Waste Management Regulations (Applicable and Well-Suited)

Regulations promulgated under the Solid Waste Management Act, 33 U.S.C. 75-10-201 *et seq.*, MCA, specify requirements that apply to the location of any solid waste management facility. Under the selected remedy, no solid or hazardous waste (other than media treated to cleanup levels) may be disposed on-site. The standards therefore are pertinent to the cinder pile (well-suited) and placement of ex situ soils treated to cleanup levels (applicable) and post-jurisdictional wastes (applicable).

Under ARM 17.50.505(1), a facility for the treatment, storage or disposal of solid wastes:

- (a) must be located where a sufficient acreage of suitable land is available for solid waste management;
- (b) may not be located in a 100-year floodplain;
- (c) may be located only in areas which will prevent the pollution of ground and surface waters and public and private water supply systems;
- (d) must be located to allow for reclamation and reuse of the land;
- (e) drainage structures must be installed where necessary to prevent surface runoff from entering waste management areas; and
- (f) where underlying geological formations contain rock fractures or fissures which may lead to pollution of the ground water or areas in which springs exist that are hydraulically connected to a proposed disposal facility, only Class III disposal facilities may be approved.

Floodplain and Floodway Management Act and Regulations (Applicable)

A portion of the site is in a designated floodplain. The following standards are included here to indicate the restrictions on any related activities that might occur in or affect the floodway or floodplain.

Residential, certain agricultural, industrial-commercial, recreational and other uses are permissible within the designated floodway, provided they do not require structures other than portable structures, fill or permanent storage of materials or equipment. § 76-5-401, MCA; ARM 36.15.601.

In the flood fringe (i.e., within the floodplain but outside the floodway), residential, commercial, industrial, and other structures may be permitted subject to certain conditions relating to placement of fill, roads, and floodproofing. § 76-5-402, MCA; ARM 36.15.701.

Domestic water supply wells may be permitted, even within the floodway, provided the well casing and well meets certain conditions. ARM 36.15.602(6).

Solid and hazardous waste disposal and storage of toxic, flammable, hazardous, or explosive materials are prohibited anywhere in floodways or floodplains. ARM 36.15.602(5), 36.15.605, and 36.15.703.

The following are prohibited in a floodway: buildings for living purposes or place of assembly or permanent use by human beings; any structure or excavation that will cause water to be diverted from the established floodway, cause erosion, obstruct the natural flow of water, or reduce the

carrying capacity of the floodway; and the construction or permanent storage of an object subject to flotation or movement during flood level periods. 3 76-5-402, MCA.

3 76-5-406, MCA and ARM 36.15.216 contain substantive factors which address obstruction or use within the floodway or floodplain.

Further conditions or restrictions that generally apply to specific activities within the floodway or floodplain can be found at ARM 36.15.604 (increase in upstream elevation or significantly increase flood velocities); ARM 36.15.602(1) (excavation of material from pits or pools); ARM 36.15.603 (water diversions or changes in place of diversion);

ARM 36.15.701(3)(c) requires that roads, streets, highways and rail lines must be designed to minimize increases in flood heights.

Structures and facilities for liquid or solid waste treatment and disposal must be floodproofed to ensure that no pollutants enter flood waters and may be allowed and approved only in accordance with DEQ regulations, which include certain additional prohibitions on such disposal. ARM 36.15.701(3)(d).

Standards applied to residential, commercial or industrial structures are found at ARM 36.15.702(2).

Flood control works are subject to ARM 36.15.606, which requires compliance with safety standards for levees, floodwalls, and riprap.

ARM 36.15.901 requires electrical systems to be flood-proofed.

IV. FEDERAL AND STATE ACTION SPECIFIC REQUIREMENTS

Federal Hazardous Waste Management Regulations (Applicable)

The Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 33 6901 et seq., and the Montana Hazardous Waste Act, 33 75-10-401 et seq., MCA, and regulations under these acts establish a regulatory structure for the generation, transportation, treatment, storage and disposal of hazardous wastes. These requirements are applicable to substances and actions at the site which involve the active management of hazardous wastes.

Burlington Northern operated the site and generated waste through 1986-7. Therefore, in certain instances, disposal was not pre-jurisdictional and the hazardous waste requirements are applicable now. However, DEQ does not have the documentation showing the dates of individual discharges, and therefore has, for purposes of this ROD, made a determination to treat all historic waste and media containing waste as pre-jurisdictional (in accord with the NCP and EPA guidance). Therefore, under this ROD, the historic waste which is characteristic or listed becomes hazardous upon

excavation (generation).

Identification and Listing of Hazardous Waste

Wastes may be designated as hazardous by either of two methods: listing or demonstration of a hazardous characteristic. Listed wastes are the specific types of wastes determined by EPA to be hazardous as identified in 40 CFR Part 261, Subpart D (40 CFR 261.30 - 261.33). Listed wastes are designated hazardous by virtue of their origin or source, and must be managed as hazardous wastes regardless of the concentration of hazardous constituents. Characteristic wastes are those that by virtue of concentrations of hazardous constituents demonstrate the characteristic of ignitability, corrosivity, reactivity or toxicity, as described at 40 CFR Part 261, Subpart C.

Certain of the wastes at the site demonstrate the characteristic of toxicity, and are therefore characteristic hazardous wastes upon excavation. The site also contains F001 and F002 which are listed hazardous wastes for chlorinated solvents. The various media and wastes at the site contaminated by the F001 and F002 wastes are also hazardous wastes pursuant to 40 CFR Part 261 upon excavation. The RCRA requirements specified below are applicable requirements for the treatment, storage and disposal of these wastes. See 40 CFR 261.31 (Hazardous Waste Numbers F001 and F002) and ARM 17.54.501. These ERCLs apply to remedial activities; on-going operations must comply State and federal requirements and permits.

EPA has advised EPA Regions and States that conservative, health-based levels derived from direct exposure pathways would clearly be acceptable as "contained-in" levels. [See memorandum from Sylvia K. Lowrance to Jeff Zelikson, Region IX, (January 24, 1989)]. EPA and many States specify conservative, risk-based levels calculated with standard conservative exposure assumptions (usually based on unrestricted access), or site-specific risk assessments. 61 FR at 18795 (April 29, 1996); 63 FR 28556 (May 26, 1998) [Part I of II]. For the BN Livingston Shop Complex, soils treated to below cleanup levels will be allowed to return to the site (from, for example, the electric shop) to an approved location in compliance with RCRA.

For media which contain hazardous waste, all standards are applicable except for disposal requirements for "contained-out" soils. For all non-media wastes, the standards are applicable. However, no on-site disposal of hazardous waste is allowed under the selected remedy. Therefore, all hazardous wastes, including all media not treated to cleanup levels must be disposed off-site at a regulated subtitle C facility. These standards specifically apply to free product removed from within the solvent plume. For free product removed from outside the solvent plume 40 CFR Part 279 is applicable.

Because of the presence of listed and characteristic hazardous waste, the permit requirements specified in ARM 17.53.112 are applicable. However, DEQ is exempting remedial actions involving hazardous waste from RCRA permit requirements pursuant to 75-10-721(3), MCA (1993) as long as substantive requirements are met. This does not, however, affect the requirement to comply with ARM 17.53.111, Registration and EPA Identification Numbers for Generators and Transporters.

Workplans will require detailed information on compliance with all procedural and substantive standards (as well as all ERCLs).

Set out below are the hazardous waste requirements that are applicable for the types of waste management units or the waste management practices anticipated in the remedial actions at the site.

Standards for Transporters of Hazardous Waste

The RCRA regulations at 40 CFR Part 263, establish standards that apply to transporters of hazardous waste. These standards include requirements for immediate action for hazardous waste discharges. These standards are applicable for any on-site transportation. These standards are independently applicable (see Other Laws section) for any off-site transportation.

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

General Facility Standards

The regulations at 40 CFR 264, Subpart B, establish general facility requirements. These standards include requirements for general waste analysis, security and location standards.

Releases from Solid Waste Management Units

The regulations at 40 CFR 264, Subpart F, establish requirements for groundwater protection for RCRA-regulated solid waste management units (i.e., waste piles, surface impoundments, land treatment units, and landfills). The regulations at Subpart F establish monitoring requirements for RCRA-regulated solid waste management units (i.e., waste piles, surface impoundments, land treatment units, and landfills). Subpart F provides for three general types of groundwater monitoring: detection monitoring (40 CFR 264.98); compliance monitoring (40 CFR 264.99); and corrective action monitoring (40 CFR 264.100). Monitoring wells must be cased according to 264.97(c).

Monitoring is required during the active life of a hazardous waste management unit. If hazardous waste remains, monitoring is required for a period necessary to protect human health and the environment.

Closure and Post-Closure Monitoring and Maintenance of Waste Management or Disposal Facilities

40 CFR Part 264, Subpart G, establishes that hazardous waste management facilities must be closed in such a manner as to (a) minimize the need for further maintenance and (b) control, minimize or eliminate, to the extent necessary to protect public health and the environment, post-closure escape of hazardous wastes, hazardous constituents, leachate, contaminated runoff or hazardous waste decomposition products to the ground or surface waters or to the atmosphere.

Requirements for facilities requiring post-closure care include the following: the facilities must undertake appropriate monitoring and maintenance actions, control public access, and control post-closure use of the property to ensure that the integrity of the final cover, liner, or containment system is not disturbed. In addition, all contaminated equipment, structures and soil must be properly disposed of or decontaminated unless exempt and free liquids must be removed or solidified, the wastes stabilized, and the waste management unit covered.

Waste Containers and Tanks

40 CFR Part 264, Subparts I and J apply to owners and operators of facilities that store hazardous waste in containers, and store or treat hazardous waste in tanks, respectively. These regulations are applicable to any storage or treatment in these units at the site. The related provisions of 40 CFR 261.7, residues of hazardous waste in empty containers, are also applicable.

Waste Piles

40 CFR Part 264, Subpart L, applies to owners and operators of facilities that store or treat hazardous waste in piles. The regulations include requirements for the use of run-on and run-off control systems and collection and holding systems to prevent the release of contaminants from waste piles. These regulations are applicable to any storage in waste piles at the site.

Staging Piles

40 CFR 264.554 sets forth a new storage unit called the staging pile. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate). The staging pile must not operate for more than two years and cannot be used for treatment.

RCRA Land Disposal Restrictions

Since the wastes to be treated are listed and characteristic wastes, the RCRA Land Disposal Restrictions (LDRs) treatment levels set forth in 40 CFR Part 268 are applicable requirements including the treatment levels for F001 and F002 listed wastes for the disposal of hazardous wastes generated at the site. With the exception of treated soils, hazardous wastes are prohibited from disposal on-site.

The HWIR Media Rule, promulgated at 63 Fed. Reg. 65874 (November 30, 1998) allows listed waste treated to levels protective of human health and the environment to be disposed on-site without triggering land ban or minimum technology requirements for these disposal requirements. Treated soils containing hazardous waste will need to meet cleanup levels to avoid triggering land ban or minimum technology requirements for these disposal requirements.

Hazardous debris

Since on-site disposal of solid and hazardous wastes is prohibited at the site, any hazardous debris remaining on-site must comply with 40 CFR 268.45 prior to off-site disposal as a solid waste (all off-site disposal must also comply with LDR certification requirements, which apply to these wastes). If the debris does not fully comply with 40 CFR 268.45, it must be disposed off-site at a regulated subtitle C facility.

Substantive Permit Requirements

40 CFR Part 270 sets forth the hazardous waste permit program. The substantive requirements set forth in 40 CFR Part 270, Subpart C (permit conditions), including the requirement to properly operate and maintain all facilities and systems of treatment and control are applicable requirements.

Used Oil

40 CFR Part 279 sets forth the standards for the management of used oil. For product removed from outside the solvent plume, 40 CFR Part 279 is applicable.

State Hazardous Waste Management Regulations (Applicable)

The Montana Hazardous Waste Act, §§ 75-10-401 *et seq.*, MCA, and regulations under this act establishes a regulatory structure for the generation, transportation, treatment, storage and disposal of hazardous wastes. These requirements are applicable to substances and actions at the site which involve listed and characteristic hazardous wastes.

ARM 17.53.501-502 adopts the equivalent of RCRA regulations at 40 CFR Part 261, establishing standards for the identification and listing of hazardous wastes, including standards for recyclable materials and standards for empty containers, with certain State exceptions and additions.

ARM 17.53.601-604, adopts the equivalent to RCRA regulations at 40 CFR Part 262, establishing standards that apply to generators of hazardous waste, including standards pertaining to the accumulation of hazardous wastes, with certain State exceptions and additions.

ARM 17.53.701-708, adopts the equivalent to RCRA regulations at 40 CFR Part 263, establishing standards that apply to transporters of hazardous waste, with certain State exceptions and additions.

ARM 17.53.801-803, adopts the equivalent to RCRA regulations at 40 CFR Part 264, establishing standards that apply to hazardous waste treatment, storage and disposal facilities, with certain State exceptions and additions.

ARM 17.53.1101-1102, adopts the equivalent to RCRA regulations at 40 CFR Part 268, establishing land disposal restrictions, with certain State exceptions and additions.

Section 75-10-422 MCA prohibits the unlawful disposal of hazardous wastes.

ARM 17.53.1101-1102, adopts the equivalent to RCRA regulations at 40 CFR Part 270, which establish standards for permitted facilities, with certain State exceptions and additions.

ARM 17.53.1401, adopts the equivalent of RCRA regulations at 40 CFR Part 279 which set forth the standards for the management of used oil.

National Emission Standards for Hazardous Air Pollutants (NESHAPs)

Asbestos (Well-Suited)

The federal Clean Air Act requires the EPA to set emission standards for hazardous air pollutants. 42 USC § 7412. Implementation and enforcement of these standards in Montana has been delegated to the State. See 40 CFR 61.04(b)(BB). Federal standards for hazardous air pollutants (NESHAPS) at 40 CFR Part 61, are incorporated by reference by ARM 17.8.341. The NESHAPS for asbestos are well-suited to the cinder pile and are discussed in the Asbestos section below; however, the solid waste requirements are the more stringent of the ERCLs that must be complied with with respect to covering of the cinder pile.

40 CFR 61.145. (well-suited). Standard for demolition and renovation. This section contains standards for demolition or renovation of a facility. The standards are designed to reduce or eliminate asbestos emissions from such operations, and include provisions for notification regarding intended project, wetting of asbestos materials, use of exhaust systems, careful movement of asbestos materials, and presence on site of a trained asbestos removal person. This section applies to any demolition or renovation of a structure, installation, building, or waste disposal area at the site containing asbestos materials.

40 CFR 61.151. (well-suited). Standard for inactive waste disposal sites for asbestos mills and manufacturing and fabricating operations. There must either be no discharge of visible emissions from the site to the outside air, or the specified covering or treatment methods must be followed. Warning signs must be posted and prior notice must be given to EPA or the State before the waste material is excavated or disturbed.

Vinyl Chloride (Applicable)

40 CFR Part 61, Subpart F contains the national emission standard for vinyl chloride. 40 CFR 61.64(b) requires concentrations from vinyl chloride in each exhaust gas stream from each stripper not exceed 10 ppm.

National Pollutant Discharge Elimination System (NPDES) and the Montana Pollutant Discharge Elimination System (MPDES)(Applicable)

40 CFR Part 122, Subpart C and ARM 17.30.1342-1344 set forth the substantive requirements applicable to all MPDES and NPDES permits. Permits must be obtained for all surface and groundwater systems that are part of remedial actions, including proper operation and maintenance of all facilities and systems of treatment and control.

Technology-Based Treatment (Applicable)

40 CFR Part 125 and ARM 17.30.1344 set forth criteria and standards for dischargers. Based on the source, the technology-based treatment standards include the best practicable control technology (BPT), best conventional pollutant control technology (BCT), or Best Available Technology Economically Achievable (BAT).

Underground Injection Control Program (Well-Suited)

The Underground Injection Control Program set forth at 40 CFR 146, sets forth the standards and criteria for the injection of substances into aquifers. Wells are classified as Class I through V, depending on the location and the type of substance injected. For all classes, no owner may construct, operate or maintain an injection well in a manner that results in the contamination of an underground source of drinking water at levels that violate MCLs or otherwise adversely affect the health of persons. Each classification may also contain further specific standards, depending on the classification.

Solid Waste Management Regulations (Applicable & Well-Suited)

ARM 17.50.505(2) specifies standards for solid waste management facilities, including the requirements that:

1. Class II landfills must confine solid waste and leachate to the disposal facility. If there is the potential for leachate migration, it must be demonstrated that leachate will only migrate to underlying formations which have no hydraulic continuity with any state waters;
2. adequate separation of group II wastes from underlying or adjacent water must be provided; and

3. no new disposal units or lateral expansions may be located in wetlands.

ARM 17.50.505 also specifies general soil and hydrogeological requirements pertaining to the location of any solid waste management facility.

ARM 17.50.511 sets forth general operational and maintenance and design requirements for solid waste facilities using landfilling methods. Specific operational requirements, specified in ARM 17.14.511 are run-on and run-off control systems requirements, requirements that sites be fenced to prevent unauthorized access, and prohibitions of point source and nonpoint source discharges which would violate Clean Water Act requirements.

ARM 17.50.530 sets forth the closure requirements for landfills. Class II landfills must meet the following criteria:

1. install a final cover that is designed to minimize infiltration and erosion.
2. design and construct the final cover system to minimize infiltration through the closed unit by the use of an infiltration layer that contains a minimum 18 inches of earthen material and has a permeability less than or equal to the permeability of any bottom liner, barrier layer, or natural subsoils or a permeability no greater than 1×10^{-5} cm/sec, whichever is less;
3. minimize erosion of the final cover by the use of a seed bed layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth and protecting the infiltration layer from frost effects and rooting damage;
4. revegetate the final cover with native plant growth within one year of placement of the final cover.⁶

ARM 17.50.531 sets forth post closure care requirements for Class II landfills. Post closure care must be conducted for a period sufficient to protect human health and the environment. Post closure care requires maintenance of the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the cover and comply with the groundwater monitoring requirements found at ARM Title 17, chapter 14, subchapter 7.

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ARM 17.50.530(1)(b) allows the department to approve an alternative final cover design if it achieves the reduction in infiltration and protection from erosion to a level at least as equivalent as the stated criteria.

Transportation of Solid Waste (Applicable)

For solid wastes, § 75-10-212 prohibits dumping or leaving any debris or refuse upon or within 200 yards of any highway, road, street, or alley of the State or other public property, or on privately owned property where hunting, fishing, or other recreation is permitted.

ARM 17.50.523 requires that such waste must be transported in such a manner as to prevent its discharge, dumping, spilling, or leaking from the transport vehicle.

Underground Storage Tank Regulations (Applicable)

These standards are applicable. To the extent certain UST systems were removed prior to the effective date of the regulations, diesel is found separate and distinct from an UST system, or UST regulations are not applicable, the UST requirements remain well-suited since they address situations or problems sufficiently similar to those at the site.

40 CFR Part 280, Subpart F sets forth requirements for Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances. These include initial response, initial abatement measures, site characterization, free product removal, and investigations for soil and groundwater cleanup.

40 CFR 280.64 provides that where investigations in connection with leaking underground storage tanks reveal the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the implementing agency. This regulation also requires that the free product removal be conducted in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, State and Federal regulations.

40 CFR 280.64 provides that abatement of free product migration is a minimum objective for the design of the free product removal system provides that any flammable products must be handled in a safe and competent manner to prevent fires or explosions.

40 CFR Part 280, Subpart D sets forth requirements for release detection.

40 CFR 280.43 (well-suited) specifies groundwater monitoring requirements for underground storage tanks and requires continuous monitoring devices or manual methods used to detect the presence of at least 1/8 of an inch of free product on top of the groundwater in the monitoring wells.

The Montana regulations regarding underground storage tanks include similar requirements.

Title 17, Chapter 56, Sub-Chapter 4 specifies release detection.

ARM 17.56.407 specifies groundwater monitoring requirements for underground storage tanks and requires continuous monitoring devices or manual methods used to detect the presence of at least 1/8 of an inch of free product on top of the groundwater in the monitoring wells.

Title 17, Chapter 56, Sub-Chapter 6 specifies release response and corrective action for tanks containing petroleum or hazardous substances.

A.R.M. 17.56.602 through 605 requires certain mitigation measures including removal of as much of the regulated substance from the system as is necessary to prevent further release into the environment and prevention of further migration of the released substance into surrounding soil and groundwater.

Asbestos Regulation in Building Construction and Demolition (Well-Suited)

Sections 50-64-101 et seq., MCA, regulate construction and demolition of structures that contain asbestos.

Section 50-64-104, MCA, provides for various safeguards to prevent release of asbestos into the air. The prescribed safeguards include notification of the local fire department, posting of warning signs, wetting of surfaces, dust emission control, covering and wetting during transport, and deposition at a landfill where materials are unlikely to be disturbed and where signs warn that asbestos-containing material is buried in the landfill. The listed safeguards are well-suited to the covering of the cinder pile.

Well Drilling (Applicable)

Section 85-2-505, MCA, precludes the wasting of groundwater. Any well producing waters that contaminate other waters must be plugged or capped, and wells must be constructed and maintained so as to prevent waste, contamination, or pollution of groundwater.

Section 85-2-516, MCA states that within 60 days after any well is completed a well log report must be filed by the driller with the Montana Department of Natural Resources and Conservation and the appropriate county clerk and recorder.

ARM 17.30.641 provides standards for sampling and analysis of water to determine quality.

ARM 17.30.646 requires that bioassay tolerance concentrations be determined in a specified manner.

ARM 36.21.670-678 and 810 specifies certain requirements that must be fulfilled when abandoning monitoring wells.

Reclamation Requirements (Well-Suited)

Certain portions of the Montana Strip and Underground Mining Reclamation Act and Montana Metal Mining Act are well-suited requirements for certain revegetation and construction activities at the site.

Section 82-4-231, MCA: Requires operators to reclaim and revegetate affected lands using most modern technology available.

Section 82-4-233, MCA: Operators must plant vegetation that will yield a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area and capable of self-regeneration.

Section 82-4-336, MCA: Disturbed areas must be reclaimed to utility and stability comparable to areas adjacent.

ARM 17.24.501: Provides general backfilling and grading requirements.

ARM 17.24.519: Pertinent areas where excavation will occur will be regraded to minimize settlement.

ARM 17.24.631: Disturbances to the prevailing hydrologic balance will be minimized. Changes in water quality and quantity, in the depth to groundwater and in the location of surface water drainage channels will be minimized, to the extent consistent with the selected response alternatives. Other pollution minimization devices must be used if appropriate, including stabilizing disturbed areas through land shaping, diverting runoff, planting quickly germinating and growing stands of temporary vegetation, mulching, and control of toxic-forming waste materials.

ARM 17.24.633: Surface drainage from a disturbed area must be treated by the best technology currently available (BTCA). Treatment must continue until the area is stabilized.

ARM 17.24.634: Disturbed drainages will be restored to the approximate pre-disturbance configuration, to the extent consistent with the selected response alternatives.

ARM 17.24.638: Sediment control measures must be implemented during operations.

ARM 17.24.639: Sets forth requirements for construction and maintenance of sedimentation ponds.

ARM 17.24.640: Discharges from sedimentation ponds, permanent and temporary impoundments, must be controlled to reduce erosion and enlargement of stream channels, and to minimize disturbance of the hydrologic balance.

ARM 17.24.643 through 17.24.646: Provisions for groundwater protection, groundwater recharge protection, and groundwater and surface water monitoring.

ARM 17.24.701 and 702: Requirements for redistributing and stockpiling of soil for reclamation. Also outline practices to prevent compaction, slippage, erosion, and deterioration of biological properties of soil will be employed.

ARM 17.24.711: Requires that a diverse, effective and permanent vegetative cover of the same seasonal variety and utility as the vegetation native to the area of land to be affected must be established. This provision would not be well-suited in certain instances, for example, where there is dedicated development.

ARM 17.24.713: Seeding and planting of disturbed areas must be conducted during the first appropriate period for favorable planting after final seedbed.

ARM 17.24.714: Mulch or cover crop or both must be used until adequate permanent cover can be established.

ARM 17.24.716: Establishes method of revegetation.

ARM 17.24.718: Requires soil amendments, irrigation, management, fencing, or other measures, if necessary to establish a diverse and permanent vegetative cover.

ARM 17.24.723: States that operators shall conduct approved periodic measurements of vegetation, soils, and water.

ARM 17.24.724: Specifies that revegetation success must be measured by approved unmined reference areas. Required management for these reference areas is set forth.

ARM 17.24.726: Sets the required methods for measuring productivity.

ARM 17.24.728: Sets requirements for measurements of the composition of vegetation on reclaimed areas.

ARM 17.24.761: This specifies fugitive dust control measures which will be employed during excavation and construction activities to minimize the emission of fugitive dust.

Noxious Weeds (Applicable)

§ 7-22-2101(7)(a), MCA defines "noxious weeds" as any exotic plant species established or that may be introduced in the state which may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is

designated: (i) as a statewide noxious weed by rule of the department; or (ii) as a district noxious weed by a board, following public notice of intent and a public hearing. Designated noxious weeds are listed in ARM 4.5.201 through 4.5.204 and must be managed consistent with weed management criteria developed under MCA § 7-22-2109(2)(b). Notification and plan must occur as set forth in § 7-22-2152, MCA, as amended.

V. OTHER LAWS

These laws are laws which are independently applicable rather than ERCLs for the site.

Surface Water and Groundwater Act

Section 85-2-101, MCA, declares that all waters within the state are the state's property, and may be appropriated for beneficial uses. The wise use of water resources is encouraged for the maximum benefit to the people and with minimum degradation of natural aquatic ecosystems.

Groundwater and Surface Water Appropriation

Parts 3 and 4 of Title 85, Chapter 2, MCA, set out requirements for obtaining water rights and appropriating and utilizing water. All requirements of these parts are laws which must be complied with in any action using or affecting waters of the state.

Controlled Ground Water Area

Pursuant to section 85-2-507 MCA, the Department of Natural Resources and Conservation may grant either a permanent or a temporary controlled ground water area. The maximum allowable time for a temporary area is four years.⁷

Pursuant to 85-2-506 MCA, designation of a controlled groundwater area may be proposed if (a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within the ground water area; (b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area; (c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area; (d) that ground water levels or pressures in the area in question are declining or have declined excessively; (e) that excessive ground water withdrawals would cause contaminant migration; (f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur; or (g) that water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

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If a temporary controlled ground water area is granted, the statute requires DNRC to commence studies to determine the designation or modification of a permanent controlled ground water area.

Occupational Safety and Health Act

The federal Occupational Safety and Health Act regulations found at 29 CFR 1910 are applicable to worker protection during conduct of RI/FS or remedial activities.

Montana Occupational Health Act

ARM 17.74.101, along with the similar federal standard in 29 CFR 1910.95, addresses occupational noise.

ARM 17.74.102, along with the similar federal standard in 29 CFR 1910.1000 addresses occupational air contaminants.

Montana Safety Act

Sections 50-71-201, 202 and 203, MCA, state that every employer must provide and maintain a safe place of employment, provide and require use of safety devices and safeguards, and ensure that operations and processes are reasonably adequate to render the place of employment safe.

Employee and Community Hazardous Chemical Information Act

Sections 50-78-201, 202, and 204, MCA, state that each employer must post notice of employee rights, maintain at the work place a list of chemical names of each chemical in the work place, and indicate the work area where the chemical is stored or used. Employees must be informed of the chemicals at the work place and trained in the proper handling of the chemicals.

Standards for Generators of Hazardous Waste

The RCRA regulations at 40 CFR Part 262 and ARM 17.53.601-604 establish standards that apply to generators of hazardous waste. These standards include requirements for obtaining an EPA identification number and maintaining certain records and filing certain reports. These standards are applicable for any waste which will be transported off-site.

Standards for Transporters of Hazardous Waste

The RCRA regulations at 40 CFR Part 263 and ARM 17.53.701-708 establish standards that apply to transporters of hazardous waste. These standards include requirements for immediate action for hazardous waste discharges. These standards are applicable for any off-site transportation.

RCRA Land Disposal Restrictions

Since the wastes to be treated are listed and characteristic wastes, the RCRA Land Disposal Restrictions (LDRs) treatment levels set forth in 40 CFR Part 268 ARM 17.53.1101-1102 are applicable requirements including the treatment levels for F001 and F002 listed wastes for the disposal of hazardous wastes generated at the site.

Oil Transportation

49 CFR Chapter I, Subchapter B (Oil Transportation) and Subchapter C (Hazardous Materials) and ARM. 23.5.101 apply to transporters of oil and hazardous materials. These standards are applicable for any off-site transportation of oil meeting the quantity requirements set forth in Subchapter B or for the transportation of hazardous materials such as the transportation of asbestos-containing waste material.

Montana Asbestos Control Act

The Montana Asbestos Control Act, 39 75-2-501 et seq., MCA, and implementing rules establish standards and procedures for accreditation of asbestos-related occupations and control of the work performed by persons in asbestos-related occupations.

A permit from DEQ is required before any person can conduct an asbestos project. The definition of "asbestos project" includes the encapsulation, enclosure, removal, transportation, or disposal of asbestos-containing waste. 39 75-2-502(4), MCA; ARM 17.74.302(3). In addition, a person who inspects, plans, designs, supervises, contracts for or works on an asbestos project must meet DEQ training and accreditation requirements. see also 39 75-2-511, MCA.

ARM 17.74.314 states that no person may engage in an asbestos-type occupation unless accredited in that occupation or may employ or subcontract with nonaccredited individuals or contractors. No person may conduct an asbestos abatement project without a permit.

ARM 17.74.335 states that asbestos abatement projects require a DEQ permit. The permit conditions include but are not limited to:

- a. a requirement that all work performed be in accordance with 29 CFR 1926.58 (asbestos standards for the construction industry); and 40 CFR 763.120, 121 (requirements for asbestos abatement projects);
- b. a requirement that all asbestos be properly disposed in an approved asbestos disposal facility. "Approved asbestos disposal facility" is defined at ARM 17.54.302(1) as a properly operated and licensed class II landfill as described in ARM 17.50.504;
- c. a requirement that asbestos be disposed in accordance with 40 CFR Part 61, Subpart M

(National Emission Standard for Asbestos). See discussion above on National Emission Standard for Asbestos.

ARM 17.74.338 requires an accredited asbestos abatement supervisor be physically present at all times at the work-site where a permitted asbestos abatement project is being performed and must be accessible to all workers. On-site air monitoring must be conducted by an accredited asbestos contractor/supervisor, an engineer or industrial hygienist.

ARM 17.74.341 requires records of each asbestos abatement project be retained for a minimum of 30 years and must be made available to DEQ at any reasonable time. This section provides a non-inclusive list of the records to be retained.

Locomotive Emissions

40 CFR Part 92 establishes control of air pollution from locomotives and locomotive engines.
